

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SHERRY L. RIEMER,

Plaintiff,

v.

Case No. 06-C-822

ASTENJOHNSON, INC.,

Defendant.

ORDER DENYING MOTION TO AMEND

On August 1, 2006, plaintiff filed a one hundred twenty-three paragraph complaint alleging that defendant AstenJohnson, Inc., had violated her rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* Defendant filed a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure claiming that, despite the length of her complaint, plaintiff had failed to allege sufficient information from which a reasonable individual could conclude that there are any actionable violations. As part of her response to defendant's motion, plaintiff has now filed a motion for leave to file an amended complaint. Plaintiff's motion will be denied, but without prejudice.

Two reasons present themselves upon which plaintiff's motion to amend should be denied. The first is that it is not necessary. Under Rule 15, "a party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served" Fed. R. Civ. P. 15(a) Although the defendant has filed a motion to dismiss the complaint, a motion to dismiss is not a responsive pleading. *See Car Carriers, Inc., v. Ford Motor Company*, 745 F.2d, 1101, 1111 (7th Cir. 1984.) ("It is well settled in this circuit that a motion to dismiss is not a 'responsive pleading'

within the meaning of Rule 15(a)"). Thus, since no responsive pleading has yet been filed, plaintiff is free to amend without leave of the court.

The second reason that plaintiff's motion should be denied is that it fails to comply with the local rules governing procedure in this district. The rule governing motions to amend pleadings states:

A motion to amend a pleading must specifically states in the motion what changes are sought by the proposed amendments. Any party submitting a motion to amend must attach to the motion the original of the proposed amended pleading. Any amendment to a pleading, whether filed as a matter of course or upon motion to amend must reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference. If the motion to amend is granted, the court must then detach the amended pleading and file it when the order granting the motion to amend is filed.

Civil L.R. 15.1. In this case, plaintiff has failed to attach a copy of his proposed amended complaint to his motion. Failure to comply with the local rules also constitutes grounds for denying the motion.

Nevertheless, the denial of plaintiff's motion is without prejudice and he retains the right to file an amended complaint without leave of the court. Whether any such amended complaint will render moot the motion to dismiss filed by the defendant remains to be seen. In the meantime, plaintiff's response to defendant's motion has now been filed and upon filing of a reply will be ripe for decision. If no amended complaint is filed by that time, the court will decide the motion on the record as it now stands.

SO ORDERED this 19th day of September, 2006.

s/ William C. Griesbach
William C. Griesbach
United States District Judge